

ENTERED

May 03, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DEBORA BOGANY, §
§
Plaintiff, §
§
VS. § CIVIL ACTION NO. H-19-664
§
§
CVS PHARMACY, INC; SECURITAS §
SECURITY SERVICES USA, INC.; and §
THIERNO BALDE, §
§
Defendants. §

MEMORANDUM AND ORDER DENYING MOTION TO REMAND

Debora Bogany sued CVS Pharmacy, Inc., Securitas Services USA, Inc., and an unidentified defendant in state court, alleging negligence and premises liability based on an injury Bogany allegedly sustained at a Houston-area CVS store in November 2017. (Docket Entry No. 1-2). Securitas and CVS timely removed. (Docket Entry Nos. 1, 7). Bogany filed an amended complaint adding Thierno Balde as a defendant and moved to remand, arguing that this court lacks subject-matter jurisdiction because the parties are no longer completely diverse. (Docket Entry No. 8, 9). Bogany and Balde are both Texas citizens. (Docket Entry No. 8 at 2-3).

The parties dispute whether: (1) CVS and Securitas are diverse; (2) removal was proper; and (3) Bogany improperly joined Balde. Noting that the removing party has the burden to establish diversity jurisdiction, the court addresses each issue in turn. *Baker v. Hercules Offshore, Inc.*, 713 F.3d 208, 212 (5th Cir. 2013).

Bogany argues that CVS and Securitas are Texas citizens because they have “registered agents in Texas and are licensed to do business in . . . Texas.” (Docket Entry No. 9 at 2). This argument is foreclosed by the well-settled rule that “[f]or the purposes of diversity jurisdiction, a

corporation is the citizen of the state in which it was incorporated and the state in which it has its principal place of business.” *Tewari De-Ox Sys., Inc. v. Mountain States/Rosen, Ltd. Liab. Corp.*, 757 F.3d 481, 483 (5th Cir. 2014) (citing 28 U.S.C. § 1332(c)(1)). The notice of removal states that Securitas is a Delaware corporation with its principal place of business in New Jersey. (Docket Entry No. 1 at 3). CVS’s joinder in removal states that CVS is a Rhode Island corporation and that its principal place of business is also located there. (Docket Entry No. 7 at 2). Bogany does not dispute these statements. (See Docket Entry No. 9 at 1–5). The court finds that diversity exists between Bogany, a Texas resident, and CVS and Securitas.

Bogany also argues that removal was improper because adding Balde, a Texas resident, after remand, destroyed diversity. (Docket Entry No. 9 at 2–3). In evaluating Bogany’s motion to remand, the court “consider[s] the claims in the state court petition as they existed at the time of removal.” *Smith v. Bank of Am. Corp.*, 605 F. App’x 311, 313–14 (5th Cir. 2015) (emphasis omitted). Bogany’s Texas petition named an unidentified “John Doe,” not Balde, as an individual defendant. (See Docket Entry No. 1-2 at 1–2). The removal statute provides that “the citizenship of defendants sued under fictitious names shall be disregarded.” 28 U.S.C. § 1441(b)(1). Because CVS and Securitas are not Texas citizens, removal was proper.

CVS and Securitas argue that Balde was improperly joined. (Docket Entry No. 15 at 5–9; Docket Entry No. 17 at 6–8). “[Improper] joinder can be established in two ways: (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court.” *Mumfrey v. CVS Pharmacy, Inc.*, 719 F.3d 392, 401 (5th Cir. 2013) (quoting *McKee v. Kan. City S. Ry. Co.*, 358 F.3d 329, 333 (5th Cir. 2004)). To show that Bogany is unable to establish a cause of action against Balde, CVS and Securitas must

demonstrate that there is no reasonable basis to believe that Bogany can recover from him. *Id.* None of the amended complaint's causes of action names Balde or alleges that he is liable for Bogany's injury. (See Docket Entry No. 8 at 3–4). As a result, Bogany cannot recover from Balde, and the court dismisses him from the action as an improperly joined party. *Mumfrey*, 719 F.3d at 401.

Complete diversity exists and removal was proper. The motion to remand is denied. (Docket Entry No. 9). The initial conference set for **May 29, 2019**, will proceed as scheduled.

SIGNED on May 3, 2019, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge